IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1532 OF 2003

Union Public Service Commission,)
through the Secretary,)
Dholpur House,)
New Delhi.).PETITIONER

Versus

1. Registrar, Central Administrative)
Tribunal, Mumbai Bench,)
Mumbai.)

2. Shri.T.C.Kaushik,)
Central Government Advocate,)
Ministry of Law & Justice,)
Mumbai Bench, Mumbai.)

3. Union of India, through)
Secretary to the Govt.)
of India, Ministry of Law)
& Justice, Department of)
Legal Affairs, New Delhi.).RESPONDENTS

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Mr.S.Ramaswamy i/b. S.J.Gore, Advocate for the Petitioner.
Mr.R.Shetty, Advocate for Respondent No.1.
Mr.D.A.Dubey, Advocate for Respondent No.3.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**
DATED : **JULY 27, 2006.**

ORAL JUDGMENT (PER F.I.REBELLO,J.)

1. The Union Public Service Commission has approached this Court against the order dated 5th March, 2003 passed in Original Application No.890

of 2002 by the Mumbai Bench of the Central Administrative Tribunal. Respondent pursuant to a public advertisement has invited applications for filling in six posts of Additional Legal Advisers in the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs. In the advertisement issued, the qualifications both educational and experience were set out. The respondents had also issued instructions in the matter of short-listing. The criteria disclosed was as under :

> "(a) On the basis of their qualifications and experience higher than the minimum prescribed in the advertisement;
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> (b) On the basis of experience in the relevant field, or
>
> (c) By counting experience before or after the acquisition of essential qualifications, or

(d) By holding screening test."

. It appears that there were large number of candidates and pursuant to which the Commission short listed the candidates by adopting the following criteria :

"The following shortlisting criteria was adopted for short listing the candidates belonging to general category :

Category-I

Candidates possessing EQ(A) + EQ(B) with at least 2 years experience as an Asstt.Legal Adviser/Deputy Legal Adviser of Indian Legal Service in the Department of Legal Affairs, Minister of Law, Justice & Company Affairs.

Category-II

Candidates possessing EQ(A) and 27

years or more experience under EQ(B) i.e. as Member of a State Judicial Service or a superior post in the Legal Department of a State or Central Govt. Servant who has had experience in Legal Affairs or a qualified legal practitioner.

Category-III

Candidates possessing EQ(A) and 25 years experience as an Advocate/Attorney of the High Court of Calcutta or Bombay.

2. Respondent No.2 was one of the applicants who was not invited for the interview. Pursuant to which he filed Original Application. By allowing the application the Tribunal in Para-9 held as under :

"9. We are entirely in agreement with the learned Counsel for the respondents that the respondents have right to

> shortlist the candidates, at the same time, we state that in shortlisting discrimination is not permissible. While shortlisting some rational and reasonable posts as held in 1994 (6) SSC 293-M.P. Public Service Commission Vs. Navneet Kumar Potdar must exist. We are unable to get any data for rational and reasonable basis for shortlisting the category in respect of category No.I."

. In other words the application was allowed as the learned Members of the Tribunal were of the opinion that nothing had been disclosed as to why those in Category No.I were made eligible and called for the interview.

3. The learned Counsel for the petitioner has drawn our attention to the provisions of Indian Legal Service Rules, 1957. Rule 1(A) thereof reads as under :

> "1(A) In making appointment by direct recruitment to a duty post in Grade I,

Grade II, Grade III or Grade IV, preference shall be given :-

i) to a person (not being a member of a State Judicial Service or a legal practitioner) with experience in legal advice work if such post is in the Department of Legal Affairs; and

ii) to a person with experience in legislative drafting, if such post is in the Legislative Department."

. The petitioner herein had also filed an affidavit and in answer to the contentions as urged on behalf of the petitioner in Para4(x) had set out as under :

"Para4(x): As regards averments made in this Para, it is submitted that the power of the Commission to shortlist the candidates to be called for interview have been upheld by the Hon’ble Supreme Court of India in their judgment in Civil Appeal

No.44 of 1990 filed by the Union of India Vs. T. Sundaram & Others (Annexure R.I.). It is further submitted that the candidates possessing 27 years' experience as legal practitioner were called for interview. The applicant was not called for interview as he possesses 18 years experience as legal practitioner and 6 years as Central Government Advocate. The shortlisting criteria adopted by the Commission was applied uniformly to all the candidates. No discrimination and unequal treatment has been meted out to the applicant."

. The law on the point of short-listing is settled. In a case where there are large number of candidates, it is always open to the Recruiting Body to short list candidates, provided that such short listing is reasonable and not arbitrary. If Authority needs to be cited, reference may be made to the decision of the Apex Court in Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar & Ors. (1994) 6 Supreme Court Cases 293. In the instant case in the Rules as framed

and which are known as the Indian Legal Service Rules, 1957 under Rule 1(A), preference has to be given to candidates as set out who are working in the Department of Legal Affairs if such post is in the Department of Legal Affairs, and to a person with experience in legislative drafting if such post is in the Legislative Department. These Rules are not the subject matter of challenge before the Tribunal. The petitioner herein while short listing the applicant have taken this rule into consideration. Once the Rules itself provided that a certain class of applicants are to be given preference, the Public Service Commission was bound to take that into consideration. They have so done. In the reply submitted before the Tribunal in Para-4(xiii) it was set out that in the short listing criteria approved in the case, candidates belonging to Indian Legal Service had to be given preference over the candidates possessing experience as legal practitioners. The Tribunal did not take this fact into consideration while holding that no criteria has been disclosed insofar as Category No.I is concerned. In our opinion the explanation given for short listing

was reasonable and not arbitrary. We are clearly of the opinion that the impugned order of the Tribunal dated 5th March, 2003 is not sustainable and suffers from an error of law apparent on the face of record and consequently is liable to be quash and set aside.

4. It may also be mentioned that as has been pointed, the interviews have already been conducted and the candidates were appointed. This Court after the petitioner filed the Petition had not granted any interim relief insofar as the appointment of the selected candidates.

5. For the aforesaid reasons, Rule made absolute in terms of prayer clause (a). There shall be no order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]